IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.346 OF 2005
IN
SUMMARY SUIT NO.1094 OF 2005

Jayesh Jayantilal & Co. ....Plaintiff
V/s.
Khushal Hansraj Gala ....Defendant

Mr.P.N. Gunwani i/b Mr.S.N. Shah for the Plaintiff.
Mr.P.V. Bhagat i/b Vasant & Co. for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 22ND NOVEMBER, 2005.

P.C. :

1. The suit is filed to recover the balance purchase price of the goods sold and delivered to the Defendants.

2. There is no dispute about the fact that the goods were sold and delivered on the terms and conditions contained in the suit invoice. There is no dispute about the fact that the goods were received by the Defendant. There is no doubt about the fact that the balance price is due and payable.

3. The first defence is that the Plaintiff is not entitled to maintain the suit as the goods were sold and delivered by one M/s.Kirti Dal Mills. In

paragraph 2, the Plaintiff has averred that the goods were supplied to the Defendant through M/s.Kirti Dal Mills by the Plaintiff as their commission agent under the suit bills. It is important to note that by a letter dated 31.1.2002, the Defendant confirmed that the balance amount is due and payable to the Plaintiff. The fact that the letter also states that the Plaintiff was authorised to receive the payment " on their behalf" does not militate against the Plaintiffs entitlement to maintain the suit. The debt has been assigned to the Plaintiff. The Defendant accepted and acknowledged the same not only by the letter but by having made part payments by cheque to and in favour of the Plaintiff. The cheques issued after the said letter were dishonoured.

4. The next defence is that the suit is barred by limitation. However, part payment of Rs.1000/- was admittedly made as admitted by a letter dated 19th July, 2004 (Exhibit "B" to the plaint). The part payment is acknowledged in writing. The suit is therefore within the period of limitation.

5. In the circumstances, there is no defence. Thus the Summons for Judgment is made absolute and the suit is decreed as prayed with costs.

. Refund as per rules.